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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOSE JIMENEZ SANCHEZ,

11 Petitioner,

12 v.

13 A. NEIL CLARK, Field Office Director,
14 U.S. Immigration and Customs Enforcement,
et al.,

15 Respondents.

CASE NO. C09-0309-RAJ-BAT

ORDER GRANTING TEMPORARY STAY
OF REMOVAL

16 On March 10, 2009, petitioner Jose Jimenez Sanchez, proceeding through counsel, filed a
17 Petition for Writ of Habeas Corpus and Emergency Request for Stay of Removal pursuant to 28
18 U.S.C. § 2241, along with an Emergency Motion for Ex Parte Stay of Removal. (Dkts. 1 and 2).
19 The same day, the Court entered a temporary stay of removal and directed petitioner to show
20 cause why the Court should not deny petitioner's request for stay of removal and dismiss the
21 petition for lack of jurisdiction. (Dkt. 3). On April 9, 2009, petitioner filed a response to the
22 Court's order to show cause. (Dkt. 6). Petitioner challenges the reinstatement of a prior order of
23 deportation, alleging that he is not an "alien" under 8 U.S.C. § 1252(e)(2)(A), because "he had
24 been approved for Legal Permanent Resident status under INA § 210 (SAW – Special
25 Agricultural Worker) on 12/01/1990." (Dkt. 6 at 1). Petitioner contends that his removal from
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1 the United States without an opportunity to challenge his status pursuant to *De Rincon v. DHS*,
2 539 F.3d 1133, 1137 (9th Cir. 2008), violates his due process rights.

3 Accordingly, the Court does hereby find and ORDER:

4 (1) Petitioner's request for a temporary stay of removal pending a decision on the
5 merits of this case is GRANTED. The standard of review for a stay of removal is set forth in
6 *Abassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998); *see also Andreiu v. Ashcroft*, 253 F.3d 477, 483
7 (9th Cir. 2001)(en banc)(concluding that 8 U.S.C. § 1252(f)(2) does not limit the power of
8 federal courts to grant a stay of removal). Under *Abassi*, petitioner must show either: (1) the
9 probability of success on the merits plus the possibility of irreparable harm, or (2) that serious
10 legal questions are raised and the balance of hardship tips in petitioner's favor. *Abassi*, 143 F.3d
11 at 514. The Court finds that petitioner meets the second prong. While it is too early to
12 determine whether there is a probability of success on the merits in this case, the Court finds that
13 petitioner raises serious legal questions, alleging that an immigration officer erroneously
14 reinstated a prior order of removal.
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16 In *Morales-Izquierdo v. Gonzales*, 486 F.3d 484 (9th Cir. 2007), the Ninth Circuit upheld
17 the constitutionality of the reinstatement regulations which allow an immigration officer to
18 reinstate a prior order of removal without a hearing before an immigration judge. *Id.* at 495-97.
19 The Court noted that the reinstatement statute and its implementing regulations provide
20 "significant procedural safeguards against erroneous reinstatements," requiring proof that the
21 "(1) petitioner is an alien, (2) who is subject to a prior removal order, and (3) who illegally
22 reentered the United States." *Id.* at 495 (citing INA § 241(a)(5), 8 U.S.C. § 1231(a)(5); 8 C.F.R.
23 § 241.8). The Court assumed jurisdiction to review such orders, but limited its review to the
24 three discrete inquiries an immigration officer makes to reinstate a removal order. *See id.*
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1 Sections 1252(a)(2)(A) and 1252(e) further “limit the scope of such review to habeas petitions
2 alleging that the petitioner is not an alien or was never subject to an expedited removal order.”
3 *De Ricon v. DHS*, 539 F.3d 1133, 1139 (9th Cir. 2008). Here, petitioner alleges that he is “not an
4 alien” because he retains legal permanent resident status based on his earlier SAW application.
5 (Dkt. 6 at 2). Accordingly, it appears that this Court has jurisdiction to consider petitioner’s
6 claim. *See id.*

7 Petitioner also asserts that his removal from the United States to Mexico would cause
8 irreparable injury to his family because, if he is removed, it is likely that he will never be able to
9 return to the United States. Based on all of the above, the Court finds that the balance of
10 hardship tips in petitioner’s favor.
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12 (2) The Court expresses no views at this time as to the merits of petitioner’s petition.

13 (3) The Clerk shall direct a copy of this Order to petitioner, the United States
14 Attorney for the Western District of Washington, and shall forward a copy of this Order to Judge
15 Tsuchida.
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17 DATED this 15th day of April, 2009.

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20 The Honorable Richard A. Jones
21 United States District Judge

22
23 Recommended for Entry
24 this 13th day of April, 2009.

25 /S/Brian A. Tsuchida
26 BRIAN A. TSUCHIDA
United States Magistrate Judge